

<제1부 논문>

The Role of the President and USTR in U.S. Trade Policy

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General Historical Background:

Over the last 60 years, the role of the President in U.S. trade policy has become more important as the U.S. has assumed greater responsibility and leadership in the multilateral trading system. Several major legislative initiatives during this period have managed specifically to shape the present role of the President and USTR in U.S. trade policy. The first initiative took place in 1934 when Congress passed the Reciprocal Trade Agreements Act (proposed by Secretary of State Cordell Hull) which for the first time authorized the President—with certain limitations—to negotiate U.S. trade policy on a bilateral basis. One of the main arguments made in 1934 in favor of the act was that it would increase jobs and aid industry in the United States through the increase in exports. In essence, the RTA was a desperate attempt by the United States to put an end to its policy of isolationism and lead the world away from the destructive protectionist tendencies of the period—inherent in such measures as the 1930 Smoot-Hawley Tariff—which served only to hamper economic growth and exacerbate the harmful effects of the Great Depression.

Between 1934 and 1945, the President successfully negotiated 32 bilateral trade agreements, many of which included Most-Favored-Nation(MFN) clauses. As it later turned out, nearly all of the another of the clauses contained in these trade agreements. Also, during this period and beyond, the authority granted by Congress to the Executive to enter into trade agreements under the RTA was extended several times. Of particular significance was the extension of authority granted to the President from 1945 to 1948. It was essentially under the authority of this act that the United States accepted the General Agreement on Tariffs and Trade in 1947. With the establishment of GATT, the United States and Britain recognized the need for a sound framework for multilateral trade cooperation in order to reduce tariffs and prevent the type of “beggar-thy-neighbor”

policies that had been so disastrous to world trade and economics during the interwar period and which, in the minds of many leaders, were responsible for World War II.

Over the next fifteen years, Congress continued to renew the President's authority to enter into new trade agreements on a limited basis until 1962 when President Kennedy sought to strengthen the role of the President in U.S. trade policy through the Trade Expansion Act of 1962. Reacting to the formation of the Common Market and EFTA, the economic revitalization of Western Europe and the bold pronouncements of President De Gaulle in France, Kennedy called upon Congress to give the President greater powers to negotiate tariff reductions across the Atlantic and with developing countries. Until Kennedy's bold new trade proposal was revealed, Congress had proved willing to renew the President's authority to negotiate on trade, but only insofar as the original 1934 Act provided—to negotiate on a bilateral, product-by-product basis. What Kennedy wanted was the power to negotiate linear, across-the-board tariff reduction on a multilateral basis to facilitate the process of trade liberalization and keep pace with the increasing number of countries acceding to the GATT. Kennedy also proposed to set up an Office of the U.S. Special Trade Representative under the auspices of the White House to handle all Executive duties related to trade policy.

When the Trade Expansion Act was being debated, Congress and a number of special interests were concerned about granting more authority over U.S. trade policy to the President. There existed a general fear that the President and his Trade Representative would open the flood-gates to imports and thus undermine the competitiveness of key industries at home. In the end, however, Congress passed the Trade Expansion act, expanding the powers of the President to negotiate reductions in trade barriers on an across-the-board basis. The Office of the United States Trade Representative was created shortly thereafter. Also established was an interagency trade policy mechanism for developing and coordinating U.S. Government positions on international trade and trade-related investment issues(The three tiers of committees that evolved from this mechanism are described below).

Another important development occurred under the 1974 Trade Act, whereby the U.S. Congress established the private sector advisory committee to balance the President's authority to negotiate trade policy and ensure that U.S. trade policy and trade negotiation objectives adequately reflected U.S. commercial and economic interests. The act required that membership broadly represent key economic sectors affected by trade.

The Present Role of the President and USTR in U.S. Trade Policy:

Today, U.S. trade policy development is a cooperative effort involving close cooperation and consultation among the President, Congress and the Private Sector. USTR functions as the coordinator in this effort, as well as services as lead negotiator on trade issues. As a result, the United States is able to display a united front when it negotiates multilateral and bilateral agreements with other nations.

There are essentially three major areas where the USTR plays a major coordinating role. First of all, it consults regularly with Congress. A strong and cooperative relationship with Congress has been the backbone of the USTR's extensive efforts to complete its trade policy agenda. In 1993, effective consultation with Congress facilitated the enactment of several key pieces of legislation: the North American Free Trade Agreement (NAFTA), extension of the General System of Preferences program, and extension of MFN for China and Romania. Prior to the passage of NAFTA in particular, USTR officials had more than 200 consultations and meetings with Members of staff on Capitol Hill. USTR continues to consult regularly with Congress on the full range of trade policy issues.

The second major role of the USTR is to manage the private sector advisory committee. As mentioned earlier, this committee was established in 1974 and is responsible for providing information and advice on U.S. negotiating objectives and bargaining positions before entering into trade agreements, on the operation of any trade agreement once entered into, and on other matters arising in connection with the development, implementation, and administration of U.S. trade policy.

Because private sector advice is both a critical and integral part of the trade policy process, the Clinton Administration created USTR's Office of Intergovernmental Affairs and Public Liaison the work closely with the private sector advisory committee and enhance USTR's partnership with and outreach to state and local governments, the business community, labor, environmental, and special interest groups. The Administration's trade agenda provided many opportunities for this office to conduct outreach to and consultations with the private sector advisory committees, state and local governments, and numerous public groups. The private sector advisory committee is unique in that it receives confidential information about ongoing trade negotiations and other trade policy issues and developments. In addition, it is required to report to the President on any trade agreement entered into under section 1102 of the 1988 Trade Act.

The third major responsibility of the USTR is to administer and chair the Trade Policy

Review Group (TPRG) and the Trade Policy Staff Committee (TPSC) which constitute two-thirds of the three-tier mechanism designed in 1974 for coordinating U.S. Government positions on international trade and trade-related investment issues. Members of the TPRG and the TPSC consist of the Department of Commerce, Labor, State, Agriculture, Treasury, Labor, Justice, Defense, Interior, Transportation, Energy, and Health and Human Services, the EPA, the OMB, the Council of Economic Advisors, and the International Development Cooperation Agency; the National Economic Council and the National Security Council have a joint representative. The USITC is a non-voting member of the TPSC and an observer at TPRG meetings.

The final tier of the interagency trade policy mechanism is the National Economic Council (NEC), which is chaired by the President. All executive departments and agencies, including USTR, coordinate economic policy through the Council.

During the interagency review stage, advice is sought from the private sector advisory committees and from Congress. With regard for decisions made at the interagency level, USTR assumes responsibility for directing the implementation of those decisions. Where desirable or appropriate USTR may delegate the responsibility for implementation to other agencies.

Coordination of Trade Policy

Under the Trade Expansion Act of 1962, the President established an interagency trade policy mechanism to assist with the implementation of these responsibilities. This organization, as it has evolved, consists of three tiers of committees that constitute the principal mechanism for developing and coordinating U.S. Government positions on international trade.

The Trade Policy Review Group (TPRG) and the Trade Policy Staff Committee (TPSC), administered and chaired by USTR, are the subcabinet interagency trade policy coordination groups that are central to this process. The TPSC is the first line operating group, with representation at the senior civil servant level. Supporting the TPSC are more than 60 subcommittees responsible for specialized areas.

Through the interagency process, USTR assigns responsibilities for economic analysis to members of the appropriate TPSC subcommittee. Conclusions and recommendations of this group are then presented to the full TPSC and serve as the basis for reaching interagency consensus. If agreement is not reached in the TPSC, or if particularly

significant policy questions are being considered, issues are taken up by the TPRG (Deputy USTR/Under Secretary level).

Member agencies of the TPRG and the TPSC consist of the Department of Commerce, Agriculture, State, Treasury, Labor, Justice, Defense, Interior, Transportation, and Energy, the Office of Management and Budget, the Council of Economic Advisors, and the International Development Cooperation Agency; the National Economic Council and the National Security Council have a joint representative. The U.S. International Trade Commission is a non-voting member of the TPSC and an observer at TPRG meetings. Representatives of other agencies also may be invited to attend meetings depending on the specific issues discussed.

The final tier of the interagency trade policy mechanism is the National Economic Council (NEC). Chaired by the President, the NEC is composed of the Vice President, the Secretaries of State, the Treasury, Agriculture, Commerce, Labor, Health and Human Services, Housing and Urban Development, Transportation, and Energy, the Administrator of the Environmental Protection Agency, the Chair of the Council of Economic Advisors, the Director of the Office of Management and Budget, the USTR, the National Security Advisor and the Assistants to the President for Economic Policy, Domestic Policy and Science and Technology Policy. All executive departments and agencies, whether or not represented on the Council, coordinate economic policy through the Council. The NEC Deputies Committee considers decision memoranda from the TPRG, as well as particularly important or controversial trade-related issues.

During the interagency review stage, advice is also sought from the private sector and state government advisory committees and from Congress. While virtually all issues are developed and formulated through the interagency process, USTR advice in some cases, may differ from that of the interagency committees. We believe this process has served the Federal government well and allowed USTR to carry a position to the negotiating table that is broadly representative of the national interest.

As policy decisions are made, USTR assumes responsibility for directing the implementation of that decision. Where desirable or appropriate, USTR may delegate the responsibility for implementation to other agencies.

<제1부 약정토론>

James M. West(Attorney: Min, Sohn & Kim)

The presentation by Mr. Hoog has provided a good overview of the historical background of the USTR and of its functional relations with other government and private sector institutions. As a lawyer, I am inclined to view these topics from the point of view of the American constitution. Our constitution reserves to Congress the power to regulate commerce with foreign nations. As we have heard, USTR is a creation of the legislative branch. However closely the USTR works with the President and his Cabinet, Congress has remained jealous and rather protective of its constitutional power over international trade. This often has complicated the inherently difficult task of forging a national consensus.

In principle, the USTR is an institution designed to coordinate conflicting interests and to articulate policies that are in the best interest of the entire United States. However, compared to many other countries, including Korea, the process of making trade policy in the United States is very decentralized.

The nature of our political system in the United States tends to make the USTR's role difficult to discharge. Changes in the economy, particularly structural adjustments made necessary by shifts in international trade, unfold over relatively long periods. Adjustment in a sector hit hard by a surge in imports can take ten years or more. Members of Congress, however, must concern themselves with shorter time horizons. Senators are elected every six years and members of the House of Representatives face reelection every two years. If their state or district has experienced economic distress that is perceived by constituents as attributable to import competition, legislators will be compelled to address such problems in some way, otherwise they will be defeated at the polls. Opening the U.S. economy to more imports seldom has had popular appeal for average American workers, particularly if they live in a region experiencing unemployment strains due to structural adjustment.

Free trade is an ideal endorsed by most of the national leadership in both major political parties. However, the traditional institutions we have inherited, such as the rule of

seniroyty in the Senate, sometimes enable narrow local interests to delay or block consensus on trade policy. It was partly in order to circumvent such obstructions that Congress delegated trade policy functions to USTR. By doing so, members of Congress have at times been able to divert protectionist pressures and to dissociate themselves from far-sighted policies that may be very unpopular in their local constituency.

The USTR has become a focal point for pressures from many hundreds of diverse public and private agencies, ranging from state governments to powerful industry associations. It can never hope to satisfy all the concerned interest groups. Also, given that it is constrained to be responsive to Congressional concerns, several presidents, including Nixon and Reagan, attempted to abolish the USTR and shift its functions to an executive agency under more exclusive authority of the President. These initiatives ultimately failed, however.

The functions Congress has delegated to the USTR are spelled out in considerable detail in such laws as the Omnibus Trade and Competitiveness Act of 1988. USTR must operate within the parameters of these mandates. Congressional findings of fact about unfair trade practices are based on studies conducted by many different government agencies, including the International Trade Commission, the Commerce Department and USTR itself. Foreign governments and industry groups certainly have ample opportunities to provide inputs into these fact-finding processes, directly and thorough lobbyists, and they regularly exploit these channels of access. Some Americans, notably the supporters of H. Ross Perot, believe that foreign interests have had far too loud a voice in the formation of U.S. trade policy.

The late 1980s were a period of profound conflict in U.S. trade politics because of the enormous trade deficit accumulated under the Reagan administration. For the first time in recent history, the Congress took the initiative in drafting and enacting the 1988 Omnibus Trade Bill. Given the economic strains of the time, in hindsight the legislation was far less protectionist than it might have been. In fact, its main innovations were directed toward removing foreign barriers to market access, not to curtailing imports in any radical way.

Recently, given the prospect of early establishment of a new World Trade Organization, considerable attention is being focused on relations among "unilateralism", "bilateralism" and "multilateralism" in U.S. trade policy. In Korea and elsewhere, as remarked by others on the panel today, U.S. policy is perceived as inconsistent or as "jumping" between these

different levels without rhyme or reason. This perception often stems, I believe, from a lack of understanding of how the three tiers of trade policy interact and reflect the constellations of political interests that have molded trade policy decisions.

Briefly and oversimplistically, several general observations at least may indicate how the three tiers often interact. The so-called "unilateral" responses, such as Special 301 or domestic legal remedies for dumping, export subsidies or IPR violations, are in large part an effort to "depoliticize" protectionist sentiment and channel it into institutions where problems can be solved on an objective rule-oriented basis.

The past prominence of "unilateralism" in respect of market-opening measures was, of course, to some extent attributable to obvious institutional deficiencies in the GATT system and to the chronic trade deficit which made export-promotion self-evidently legitimate to most Americans. However, ostensibly "protectionist" features of domestic law and policy in the U.S. may be understood, to a large extent, as rather mild concessions that have been politically unavoidable in order for the political leadership to exert international leadership in the direction of consolidating free trade policy on the multilateral plane.

The "bilateral" versus "multilateral" issue, likewise, is not as simple as it may seem. Throughout the postwar period, bilateral disciplines negotiated by the United States have served as a prelude to consolidation of multilateral regimes (or, in the case of NAFTA, a regional free trade area). To the extent that Presidents conclude executive agreements on trade issues rather than formal treaties, ratification by the Senate is not necessary, which expands what is feasible. Important parts of the WTO process, notably the TRIPs Agreements, represent a generalization and harmonization of a whole series of bilateral agreements extending over many years.

To suggest that a commitment to "multilateralism" somehow forecloses regional or bilateral trade regimes is far from realistic today. True, where concerned states are parties to a relevant multilateral treaty, whether the WTO Charter, the Tokyo Round GATT Codes, the Berne Convention on Copyrights, or whatever, then lower-tier disciplines ought to be fully consistent with rights and obligations under the multilateral instruments. Many bilateral negotiations, however, have been conducted not to derogate from but rather to implement the often abstract principles enshrined in multilateral conventions through concrete commitments.

Multilateral regimes may be believed to be more "impartial" from the standpoint of

small countries who feel at a disadvantage in bilateral negotiations with a larger counterpart and hope for better outcomes from a “rule-oriented” rather than a “power-oriented” process. No doubt, this belief is well-founded in some circumstances. But multilateral processes also can be unwieldy because of their greater complexity, which can play into the hands of obstructionists who have no good faith intention to comply with multilateral commitments or who hope to block change to protect narrow and backward-looking interests.

The assumption that domestic U.S. remedies against unfair trade practices are necessarily “protectionist” or “biased” seems fairly widespread in the media in Korea, but the facts often do not support such a view. An institution like the International Trade Commission (ITC), which makes injury determinations in dumping and countervailing duties proceedings, has evolved rather quickly in the direction of law-based objectivity.

Originally an agency of the Treasury Department, the ITC was made more autonomous so that the interest in collecting customs revenue would not create an appearance of ulterior interests in decision-making. The legal rules applied by the ITC have become quite detailed, and cases can be appealed to the Court of International Trade and the U.S. Supreme Court. It is simply uninformed to believe that foreigners are treated unfairly in these legal forums. In any event, most cases see strong advocacy by U.S. importers who ally themselves with Korean or other foreign parties, and the courts carefully consider the impact not only on American competitors but also on consumers of the goods in other sectors. A similar set of criteria, dictated by the circumstances of the case, will have to be applied if such cases come before WTO dispute resolution panels in the future.

How policies are expressed at different levels of the hierarchy that runs “domestic-bilateral-regional-multilateral-universal” in the end may be less important than the degree to which regimes at each level are rendered precise, predictable and mutually consistent by appropriate rulemaking. Multilateral regimes can provide an essential framework, but they cannot entirely replace the descending tiers of implementing laws and regulations. The whole system requires institutions committed to unbiased implementation of rules at each level. There are still major gaps in the present system, notably with respect to international harmonization of competition policy, and a full consensus on a universal regime of free trade will remain a Utopian ideal for a long time to come.

Finally, I would mention that there was a useful book published in 1989 by Columbia

University Press and edited by Henry Nau, entitled "Domestic Trade Politics and the Uruguay Round." This volume may be consulted with benefit by anyone interested in understanding the great differences between the United States and other countries with respect to the politics of international trade issues, It also happens to contain an interesting chapter on Korea coauthored by today's moderator. Dr. Kim Kihwan. Thank you.

Chungsoo Kim (Joong Ang Daily News Coorespondnet)

The presentation by Mr. Hoog was very educational for me. I had been all the time very confused about how the decisions are made. I read his paper and it helped me a lot to understand how the decision-making has been done in the United States concerning the U.S. trade policy.

I was particularly impressed by the three tiered channel of decision-making on the U.S. trade policy which includes, as he called, the 'Private Sector Advisory Committee'. We don't have that. In Korea, the decision-making process is very hierachical. Basically, the views of the business community are not duly reflected in Korea's economy policies. The business community is usually supposed to wait for the leadership of the omniscient and omnipotent government.

Although professor Cho had explained the historical development of the U.S. trade policy and he characterized the U.S. trade policy as an all court-pressing strategy, usually trade partners of the United States get confused, in a sense of where the United States' trade policy puts emphasis at particular time. I'm talking about constant changes in the mood and emphasis of the United States trade policy ranging from multilateralism, regionalism, bilateralism to unilateralism. It is very confusing.

Some people analyze, for example, the process of Uruguay Round is foot-dragging. And I usually explained the reason why the Uruguay Round negotiation took so long was because the U.S. was constantly moving away from this multilateral trade negotiation and jumping to other subjects such as NAFTA and section 301, all the time, every year. Maybe the U.S deliberately did so not to arrive at a quick conclusion of Uruguay Round, I would not know. But we have the impression that the U.S. trade policy is some kind of a frog. You don't know where it will jump from moment to moment. And that is the first lesson I'd like

to have from Mr. Hoog, where it is heading now in terms of emphasis out of multilateralism, regionalism, bilateralism and unilateralism. It is very important for us.

A related small question concern what we are hearing from the news. Although I'm working for a newspaper, you don't have to believe everything that is written or reported, still we keep hearing that in the implementation act of WTO which is being discussed at the moment in the U.S. Congress includes a clause that says that when the time comes the U.S. would not give a second thought to using unilateral measures such as the section 301. This is very important for Korea, because the Korean government and the specialists concerning this matter have been setting the idea of Uruguay Round. The best and the most effective idea was that if we ratified the WTO the U.S would not. It would now be rational in the sense that you don't restrain from using unilateral measures such as the section 301. I would like to have a clear explanation about that point.

A second smaller question is that this November is APEC month. We are hearing a lot of things about the APEC's year 2020 free trade idea. I'd like to know how seriously the U.S government takes this idea.

Finally, the advice I'd like to have from you is this: whenever we talk about such organizations like the United States Trade Representative, we always talk about the perspect of having Korea's own trade representative. If we have such a thing, I think we have formed the first Korea trade representative head table today. I'd like to have your advice on whether it is more or less appropriate for Korea to have such an organization. I'd like to have your advice from the perspective of both Korea's negotiators and the perspective of Korea's negotiating partner.

I would also like to take this as an opportunity to take a glimpse at the U.S. perception of Korea's current international economic policy. This is the the first time that Mr. Hoog didn't mention the Korean people's stupid impression about taking the United States' friendly suggestion and calling it as 'intolerable U.S. pressure'. I'd like to have the United States government's perception about Korea's economic policy. More specifically, whether or not the U.S government still thinks of Korea as some kind of a protectionist country and how much Korea's drive for openness and internationalization is appreciated.

Moderator

Mr. Hoog, please answer these many interesting questions.

John F. Hoog

Thank you. I'll leave the question on the ITC to Mr. West. Although I would say that the ITC is involved in injury determination, for example, anti-dumping cases and I think they have pretty good track record in not finding injury in many cases, but Mr. West knows much more about that than I do.

Concerning Wilber Mills, I don't know the history. Wilber Mills was one of the largest and most vocal critics of the State Department's role in trade policy. It would not surprise me at all that he was responsible for insisting that the USTR be established and the function be separated from the State Department. I will do a little more research and see what I can find out but I would not be surprised at all if you are absolutely correct. Even later, in 1980, when the foreign commercial service in the Department of Commerce was formed, that was again a raid on the State Department taking away the State Department's role in export promotion overseas. The fact is that the State Department simply was not doing a very good job and the commercial work in my foreign service was considered one-way ticket to an early retirement and a very poor way to get an ambassadorship. There are exceptions that prove the rule but one colleague of mine who served here with me in the early 1980s as commercial officer did in fact get an ambassadorship. But he was an exception and not the rule.

I guess the point is that every bureaucratic agency has its strong points and its weak points. And the weak points tend to migrate to other places where they are done more effectively. And as a former trade ministry man nods in agreement, I suggest perhaps that the same thing is going on in the Korea government with back and forth over who has control of what.

Now about the Commerce Department, this is my own personal opinion. In fact all these opinions are my personal opinions whether they are on newspaper or not. But the Commerce Department in the U.S bureaucratic politics is very easy to tie up in knot. It is very easy to neutralize the Commerce Department because they have conflicting aims. On the one hand they are an export promotion agency. On the other hand they are an import regulating agency. They have an import administration and they have an export administration, basically. And whenever the Commerce threatens to become active in bureaucratic politics, it is very easy to set one side of the Commerce Department against the other side of the Department of Commerce. While they are off in the corner fighting

internally, the rest of government makes its decision. So I still think that the Treasury which does speak with more unified voice and has a narrower focus in financial areas, is much stronger.

Briefly and you'll excuse me if I exaggerate or generalize a little bit for affect to keep it short, this all-court press is an interesting idea. The idea that the U.S. either is pressing on all fronts or can't decide whether it want to be a multilateral, bilateral or regional trade liberalizer. I would suggest that there is no dichotomy among those. There is no reason why the U.S. or any other country has to pursue one-track toward its trade policy. First of all, remember that despite the preaching and the policy, there are very strong protectionist intra-instincts in the United States. It is very very difficult for us on many occasions to keep the free trade, open market philosophy that we espouse, actually alive and as a part of our policy. It's like riding a bicycle I would contend. If you don't keep moving forward, you are going to fall off and protectionists are going to win. Therefore I see no reason why the U.S. should not quest profitable regional liberalization such as NAFTA. And at the same time, pushing the GATT, the Uruguay Round to get the greatest degree of worldwide multilateral liberalism in trade, that is possible. So the idea that we are hopping back and forth from one to the other doesn't mean that we are giving up the Uruguay Round when we talk to Korea about bulryang sausage (불량 소시지), about the trade in hotdogs or whatever the current issue is. It doesn't mean we have to give up on the NAFTA when we are pursuing interest in the Uruguay Round.

I would contend that these interests are all mutually reinforcing. I'm a very radical, I suppose, free trade advocate but anything that increases liberalism in world trade whether it is bilateral, regional or multilateral is a net gain for the U.S economy and the world economy.

About the section 301, Dr. Son Kuk-je at the Blue House did paper for KIEF last summer which contended that the dispute settlement mechanism in the Uruguay Round is the internalization of section 301. He drew on an analyze of the elements and came to the conclusion that the world has pretty much accepted a multilateral version of 301. The common perception in Korea is that 301 is a protectionist device to close off U.S. markets. Without going into great detail, I would contend that 301 is a stick. The threat of retaliation is a secondary to the primary intent of 301 which is to open foreign markets. In that way I don't know that this retaliatory threat or this formal negotiation idea is any worse, in fact, I would contend that it is better, than some of the informal guidance or

bureaucratic discretion that exists in the Korean government to limit imports informally with only a hazy idea of where these restrictions are grounded in Korean law or Korean regulation. That is very controversial statement and I would be glad to have a beer with any of you who want to discuss it any further.

The U.S. perception of Korea's current economic policy, it is wonderful in principal, it is very slow in execution, however. My embassy and my ambassador are wonderful and enthusiastic supporters of President Kim's policies of liberalizing the Korean economy. However, the policy these days seems to me to be thwarted by problems down at the working levels of the bureaucracy where this traditional Korean suspicion of foreigners and foreign participation in the economy is still very widespread. It is very difficult for a low level Korean bureaucrat to make a decision for which he may be criticized later for having given some advantage or some concession to a foreign economic interest. While the policy direction has set, the implementation of that policy based on long standing Korean cultural patterns, I think, still has a way to go. Thank you.

James M. West

The question was concerning the impartiality of the ITC. I think it is much broader issue in a sense. I mean in first place, the ITC originally was the Treasury Department agency. Right? So the mere fact that it shifted from the Treasury Department to the Commerce Department or that it is a sort of independent agency related to the Commerce Department indicates that its function of collecting revenues in the context of countervailing duties or anti-dumping duties has been separated from the obvious interest of the Treasury Department of raising revenue. What you are talking about is the suspicion that somehow there is not a level playing field for foreign companies who are called before in an anti-dumping situation or that kind of problem.

I think that it is pretty clear over the last 10 years that the law, the American domestic law related to anti-dumping, countervailing duties also infringement of intellectual property rights, section 337 action has become much more articulated. There is code of international trade that you probably know, we can take appeals from the ITC and then you can go all the way to the U.S. Supreme Court.

So without going into the details of the legal structure, there is much more elaborate, and objective body of rules which can be used by both sides in those kind of cases. And now the WTO is in place and there are some further elaborations of the multilateral disciplines

related to subsidies and anti-dumping remedies.

The U.S., once it ratifies those instruments, of course will adapt its domestic law to reflect them. That doesn't mean that there will be an end in the anti-dumping duty actions. On the contrary such actions will quite consistent with the GATT and with those treaties. In fact in the future, it will be likely that there would be some expansion to try to coordinate other aspects of competition policy, anti-trust policy, as you know they are very important. And I gathered in last six months or so, there was rapidly increasing interest in Korea in the possible impact of the U.S. anti-trust law on the activities of major Korean conglomerates which increasingly have major impact in the U.S. market. So I think it is safe to say that the lawyers are here to stay. That may be bad news, there is going to be an increasingly complex body of law related to competition policy.

Moderator

Legal profession is a growth industry. There is no question about that. We are running out of time but Mr. Hoog, you had not answered some of the questions put to you by Mr. Kim. In particular he asked you whether Korea should have the USTR. Another one I recall is, how seriously does the U.S. take APEC? Although we have run out of time, why don't you cover these? If your answers are not sufficient today, you can have a beer with us later.

John F. Hoog

If I can tell you a quick story, Dr. Kim and I met first recently at the seminar sponsored by KIEP on APEC. And there was a discussion going on in the room among all the learned academics there, some of which was way over my head but I understood part of it. Part of the discussion was on a fairly fundamental issue. Should APEC organize and structure itself for negotiations toward regional free trade? Or should APEC try to stimulate individual, unilateral declarations and actions toward free trade? Dr. Kim made a very telling point, I think. That anytime countries sit down to talk with each other—is that not negotiations? Can you really say that APEC could ever be a stimulus for individual and unilateral trade concessions? He introduced it by saying “although I'm very poor at English,” which he is not, he said that, “It seems to me that anytime two countries or more than two countries sit down together that is a negotiation.”

After he said that I couldn't wait for another chance to speak and I said that, “That is

very true. Any time countries sit down usually it is called negotiations. However when the U.S. and Korea sit down across the table or among a group of countries, it is not called negotiations. It is called intolerable U.S. pressure.”

One problem that we at the embassy see is the tendency of the press here to treat every issue that we talk to the Korean government about as simply another example of intolerable U.S. pressure to do this or that. There is no such thing as a minor issue as soon as the press gets a hold of it.

About the Korean USTR, I'm going to drop that entirely. It is none of our business. How the Korean government chooses to organize itself to pursue trade policy is simply not something that the U.S. government should get involved in.

Even personally I have no strong views one way or the other. I'll apply intolerable U.S. pressures to whoever Korea says I should deal with.

How seriously does the U.S. government take APEC? Very seriously. The APEC perhaps is another form for advancing the cause of more liberal world trade. APEC, however, is an organization composed of many countries in many different stages of development and with many different ideas about how open or closed their market should be. Personally I disagree with the prevailing view in Korea that free trade is a luxury that only advanced countries can afford. I don't want to expect that to be a prevailing opinion around this table. Economists can prove with charts and graphs that free trade benefits everybody. Countries like Malaysia, Thailand and even countries like Indonesia are proving that free trade is an aid not a hindrance to development. But be that as it may, that is not a widely shared opinion among governmental officials. So APEC has to move at the pace that it can. If APEC leaders can agree on a principle that there should be regional free trade by 2020, I think you will find the U.S. government enthusiastically supporting that concept. But the U.S. government, on the other hand, is not going to push APEC to the point that APEC decides to move or is forced to move beyond the pace that some of its members are comfortable with and therefore members start dropping away. It is the art of the possible, I think.

Moderator

O.K. thank you very much. We are about five minutes behind so I'll bring this session to a close. Before doing so, I'd like to thank Mr. Hoog for his outstanding and also frank presentation. And I'd also like to thank you for the good questions and comments provided

by the two panelists, Dr. Kim and Mr. West.

And I'd also thank all on the floor for active participation. Thank you very much.